

**CONTRACT BETWEEN THE CITY OF AUSTIN
AND
ZirMed, Inc.
For
Healthcare Revenue Management Clearinghouse
Contract No. MA 9300 NS190000009**

This Contract is made by and between the City of Austin ("City"), a home-rule municipality incorporated by the State of Texas, and ZirMed, Inc. ("Contractor"), having offices at 888 W. Market St., Louisville, KY 40291.

SECTION 1. GRANT OF AUTHORITY, SERVICES AND DUTIES

1.1 **Engagement of the Contractor.** Subject to the general supervision and control of the City and subject to the provisions of the Terms and Conditions contained herein, the Contractor is engaged to provide the services set forth in Section 2, Scope of Work.

1.2 **Responsibilities of the Contractor.** The Contractor shall provide all technical and professional expertise, knowledge, management, and other resources required for accomplishing all aspects of the tasks and associated activities identified in the Scope of Work. In the event that the need arises for the Contractor to perform services beyond those stated in the Scope of Work, the Contractor and the City shall negotiate mutually agreeable terms and compensation for completing the additional services.

1.3 **Responsibilities of the City.** The City's Contract Manager will be responsible for exercising general oversight of the Contractor's activities in completing the Scope of Work. Specifically, the Contract Manager will represent the City's interests in resolving day-to-day issues that may arise during the term of this Contract, shall participate regularly in conference calls or meetings for status reporting, shall promptly review any written reports submitted by the Contractor, and shall approve all invoices for payment, as appropriate. The City's Contract Manager shall give the Contractor timely feedback on the acceptability of progress and task reports.

1.4 **Designation of Key Personnel.** The Contractor's Contract Manager for this engagement shall be Finance Department, Phone: (877) 494-7633, Email Address: billinginquiry@zirmed.com. The City's Contract Manager for the engagement shall be Meagan Wade, Phone: (512) 972-7232, Email Address: meagan.wade@austintexas.gov. The City and the Contractor resolve to keep the same key personnel assigned to this engagement throughout its term. In the event that it becomes necessary for the Contractor to replace any key personnel, the replacement will be an individual having equivalent experience and competence in executing projects such as the one described herein. Additionally, the Contractor will promptly notify the City Contract Manager and obtain approval for the replacement. Such approval shall not be unreasonably withheld.

SECTION 2. SCOPE OF WORK

2.1 **Contractor's Obligations.** The Contractor shall fully and timely provide all deliverables described herein and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations. For deliverables, please see Exhibit A.

SECTION 3. COMPENSATION

3.1 **Contract Amount.** The Contractor will be paid as indicated herein upon the successful completion of the Scope of Work. In consideration for the services to be performed under this Contract, the Contractor shall be paid an amount not-to-exceed \$950,000.00 for all fees and expenses.

| Contract Year | Estimated Amount |
|---------------|------------------|
| Year 1 | \$ 181,700.00 |
| Year 2 | \$ 185,850.00 |
| Year 3 | \$ 190,000.00 |
| Year 4 | \$ 194,150.00 |
| Year 5 | \$ 198,300.00 |
| Total 5 Years | \$ 950,000.00 |

3.2 **Invoices.**

3.2.1 **Invoices shall contain a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Contractor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice. Invoices received without all required information cannot be processed and will be returned to the Contractor. Invoices shall be mailed to the below address:

| | |
|-----------------------|-----------------------------------|
| | City of Austin |
| Department | Emergency Medical Services (9300) |
| Attn: | Account Payable |
| Address | P.O. Box 1088 |
| City, State, Zip Code | Austin, TX 78767 |

3.2.2 Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

3.3 **Payment.**

3.3.1 All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the deliverables or of the invoice, whichever is later.

3.3.2 **If payment is not timely made, (per this paragraph), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**

3.3.3 Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.

3.3.4 Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by electronic transfer of funds.

3.4 **Non-Appropriation.** The awarding or continuation of this Contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this Contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

3.5 **Reimbursable Expenses.** Expenses incurred directly in support of completing the work set forth in this Contract are reimbursable to the Contractor within the Contract amount.

3.5.1 **Administrative.** The Contractor will be reimbursed for selected administrative expenses incurred directly in support of executing this Contract. Reimbursable administrative expenses include actual charges for long distance telephone calls, facsimile transmissions, reproduction, printing and binding, postage, express delivery and report processing.

3.5.2 **Travel Expenses.** All travel, lodging, and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Contract will be reviewed against the City's Travel Policy and the current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulation.

3.6 **Final Payment and Close-Out.**

3.6.1 The making and acceptance of final payment will constitute:

3.6.1.1 a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and

3.6.1.2 a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

SECTION 4. TERM AND TERMINATION

4.1 **Term of Contract.** The Contract shall commence upon execution, unless otherwise specified, and shall remain in effect for an initial term of 60 months.

4.1.1 Upon expiration of the initial term or any period of extension, the Contractor agrees to hold over under the terms and conditions of this Contract for such a period of time as is reasonably necessary for the City to re-solicit and/or complete the deliverables due under this Contract (not exceed 120 calendar days unless mutually agreed on in writing).

4.3.3 This is a 60 month Contract.

4.2 **Right To Assurance.** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.

4.3 **Default.** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under the "Right to Assurance paragraph herein, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by Contractor to the City.

4.4 **Termination For Cause.** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.

4.5 **Termination and Suspension of Service.**

4.5.1 In the event of a termination of the contract, the Contractor shall implement an orderly return of City data in a CSV or another mutually agreeable format at a time agreed to by the parties and the subsequent secure disposal of City data.

4.5.2 During any period of service suspension, the Contractor shall not take any action to intentionally erase any City data.

4.5.3 In the event of termination of any services or agreement in its entirety, the Contractor shall not take any action to intentionally erase any City data for a period of:

- 10 days after the effective date of termination, if the termination is in accordance with the contract period
- 30 days after the effective date of termination, if the termination is for convenience
- 60 days after the effective date of termination, if the termination is for cause

After such period, the Contractor shall have no obligation to maintain or provide any City data and shall thereafter, unless legally prohibited, delete all City data in its systems or otherwise in its possession or under its control.

4.5.4 The City shall be entitled to any post-termination assistance generally made available with respect to the services unless a unique data retrieval arrangement has been established as part of the SLA.

4.6 **Business Associate Agreement.** If performance of this Agreement involves the use or disclosure of Protected Health Information (PHI), as that term is defined in 45 C.F.R. § 160.103, then Contractor acknowledges and agrees to comply with the terms and conditions contained in the Business Associate Agreement, attached as Exhibit B.

4.7 **Fraud.** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

SECTION 5. OTHER DELIVERABLES

5.1 **Insurance:** The following insurance requirements apply.

5.1.1 General Requirements.

5.1.1.1 The Contractor shall at a minimum carry insurance in the types and amounts indicated herein for the duration of the Contract and during any warranty period.

5.1.1.2 The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to Contract execution and within fourteen (14) calendar days after written request from the City.

5.1.1.3 The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.

5.1.1.4 The Contractor shall not commence work until the required insurance is obtained and has been reviewed by City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.

5.1.1.5 The Contractor's insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.

5.1.1.6 All endorsements naming the City as additional insured, waivers, and notices of cancellation endorsements as well as the Certificate of Insurance shall be mailed to the following address:

City of Austin

Purchasing Office
P. O. Box 1088
Austin, Texas 78767

5.1.1.7 The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.

5.1.1.8 If insurance policies are not written for amounts specified in Paragraph 5.1.2, Specific Coverage Requirements, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.

5.1.1.9 The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.

5.1.1.10 The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.

5.1.1.11 The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.

5.1.1.12 The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. All deductibles or self-insured retentions shall be disclosed on the Certificate of Insurance.

5.1.1.13 The Contractor shall endeavor to provide the City thirty (30) calendar days written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.

5.1.2 **Specific Coverage Requirements.** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

5.1.2.1 **Commercial General Liability Insurance.** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injuries). The policy shall contain the following provisions and endorsements.

5.1.2.1.1 Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.

5.1.2.1.2 Contractor/Subcontracted Work.

5.1.2.1.3 Products/Completed Operations Liability for the duration of the warranty period.

5.1.2.1.4 Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage.

5.1.2.1.5 Thirty (30) calendar days' Notice of Cancellation, Endorsement CG 0205, or equivalent coverage.

5.1.2.1.6 The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage.

5.1.2.2 **Business Automobile Liability Insurance.** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident. The policy shall contain the following endorsements:

5.1.2.2.1 Waiver of Subrogation, Endorsement CA0444, or equivalent coverage.

5.1.2.2.2 Thirty (30) calendar days Notice of Cancellation, Endorsement CA0244, or equivalent coverage.

5.1.2.2.3 The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.

5.1.2.3 **Worker's Compensation and Employers' Liability Insurance.** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee. The policy shall contain the following provisions and endorsements:

5.1.2.3.1 The Contractor's policy shall apply to the State of Texas.

5.1.2.3.2 Waiver of Subrogation, Form WC420304, or equivalent coverage.

5.1.2.3.3 Thirty (30) calendar days Notice of Cancellation, Form WC420601, or equivalent coverage.

5.1.2.5 **Professional Liability/Technology Errors and Omissions Insurance:** The Contractor shall provide coverage, at a minimum limit of \$5,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of a negligent act, error, omission, or breach of security (including but not limited to confidential or private information) arising out of the performance of professional services under this Agreement. The required coverage shall extend to technology licensed and/or purchased, including any Software licensed or Hardware purchased under this Contract.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract

5.1.2.6 **Cyber Liability Insurance:** coverage of not less than \$2,000,000 each claim and \$4,000,000 annual aggregate providing coverage for damages and claims expenses, including notification expenses, arising from (1) breach of network security, (2) alteration, corruption, destruction or deletion of information stored or processed on a computer system, (3) invasion of privacy, including identity theft and unauthorized transmission or publication of personal information, (4) unauthorized access and use of computer systems, including hackers (5) the transmission of malicious code, and (6) website content, including claims of libel, slander, trade libel, defamation, infringement of copyright, trademark and trade dress and invasion of privacy.

5.1.2.7 **Endorsements.** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

5.2 **Equal Opportunity.**

5.2.1 **Equal Employment Opportunity.** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-

compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

5.2.2 Americans With Disabilities Act (ADA) Compliance. No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

5.3 Interested Parties Disclosure. As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the Offeror. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

5.4 Acceptance of Incomplete or Non-Conforming Deliverables. If, instead of requiring immediate correction or removal and replacement of defective or non-conforming deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.

5.5 Delays.

5.4.1 The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified herein. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.

5.5.2 Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in Contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

SECTION 6. WARRANTIES

6.1 Warranty – Performance.

6.1.1 The Contractor represents and warrants that: (a) Subscription Services provided under any SaaS Subscription Schedule and Non-subscription Services provide under a Statement of Work shall be provided and performed by qualified personnel in a professional, workmanlike manner, consistent with the prevailing standards of the industry; (b) it shall use generally accepted industry practices to fulfill its obligations under each SaaS Subscription Schedule and Statement of Work; and (c) any deliverables provided by Provider shall operate in conformance with the terms of this Master Software as a Service Agreement and the applicable SaaS Subscription Schedules and Statements of Work.

6.2 Warranty – Services. The Contractor warrants and represents that all services to be provided to the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all

applicable Federal, State and local laws, rules or regulations. Except as otherwise set forth herein, this sets forth the complete warranty offered by Contractor and all other warranties, whether express or implied, are hereby disclaimed.

6.2.1 Service Levels:

- A. **Responsibilities and Uptime Guarantee:** The technical and professional activities required for establishing, managing, and maintaining the environments are the responsibilities of the Contractor.
- B. **Encryption of Data at Rest:** The Contractor shall ensure hard drive encryption consistent with validated cryptography standards as referenced in FIPS 140-2, Security Requirements for Cryptographic Modules for all personal data, unless the City approves the storage of personal data on a Contractor portable device in order to accomplish work as defined in the statement of work.

6.3 **WARRANTY – AGAINST UNDISCLOSED ILICIT CODE:** Provider warrants that, unless authorized in writing by Client, any software program or any other part or portion of the Subscription Services or Non-subscription Services developed by Provider, passed through to Client from Third Parties under this Agreement or provided to Client by Provider for use by Provider or Client shall:

- 6.3.1 Not contain any hidden file;
- 6.3.2 Not replicate, transmit or activate itself without control of a human operating the computing equipment on which it resides;
- 6.3.3 Not alter, damage or erase any data or computer programs without control of a human operating the computing equipment on which it resides;
- 6.3.4 Not contain any key, node lock, time-out or other function, whether implemented by electronic, mechanical or other means, that restricts or may restrict use or access to any software programs, Subscription Services or Non-subscription Services developed or data created under this Agreement, based on residency on a specific equipment configuration, frequency of duration of use or other limiting criteria;
- 6.3.5 Not contain any virus, malicious, illicit or similar unrequested code, whether known or unknown to Provider; and
- 6.3.6 Not use electronic self-help, including but not limited to preventing electronically Client's further or continued use of and/or access to the subscription Services, No-subscription Services or any software or other portion thereof.
- 6.3.7 Notwithstanding any provision in this Agreement to the contrary, if any Subscription Service or Non-subscription Service has any of the foregoing attributes (collectively "Illicit Code"), Provider shall be in default of this Agreement. At the request of and at no cost to Client, Provider shall remove any such Illicit Code from the licensed software within 24 hours.

To protect Client from damages that may be caused intentionally or unintentionally by the introduction of Illicit Code into Client's computer systems, no software may be installed, executed or copied onto Client's equipment without an express warranty to Client that Illicit Code does not exist. Such warranty shall be set forth on an exhibit attached to and made a part of this Agreement.

Provider agrees that in the event of any dispute with Client regarding an alleged breach of this Agreement, Provider shall not use any type of electronic means to prevent or interfere with Client's use of any portion of the Subscription Services and Non-subscription Services. Provider understands that a breach of this provision could foreseeably cause substantial harm to Client and to numerous Third Parties having business relationships with Client.

6.4 **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.

A. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.

- 6.5 B. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

SECTION 7. MISCELLANEOUS

7.1 **Data Location:** The Contractor shall provide its Services to the City and its end users solely from data centers in the U.S. Storage of City Data at rest shall be located solely in data centers in the U.S. The Contractor shall not allow its personnel or contractors to store City Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. . The Contractor may provide technical user support on a 24/7 basis using a support in other countries in order to provide round-the-clock support, unless otherwise prohibited in this contract.

7.2 **Data:**

7.2.1 **Data Ownership:** The City will own all right, title and interest in its data that is related to the services provided by this contract. The Contractor shall not access City user accounts or City data, except (1) in the course of data center operations, (2) in response to service or technical issues, (3) as required by the express terms of this contract, or (4) at the City's written request.

7.2.2 **Data Protection:** Protection of personal privacy and data shall be an integral part of the business activities of the Contractor to ensure there is no inappropriate or unauthorized use of City information at any time. To this end, the Contractor shall safeguard the confidentiality, integrity and availability of City information and comply with the following conditions:

- i. The Contractor shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of personal data and non-public data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the Contractor applies to its own personal data and non-public data of similar kind.
- ii. All data obtained by the Contractor in the performance of this contract shall become and remain property of the City.
- iii. All personal data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the Contractor is responsible for encryption of the personal data. Any stipulation of responsibilities will identify specific roles and responsibilities and shall be included in the service level agreement (SLA), or otherwise made a part of this contract.
- iv. Unless otherwise stipulated, the Contractor shall encrypt all non-public data at rest and in transit. The City shall identify data it deems as non-public data to the Contractor. The level of protection and encryption for all non-public data shall be identified and made a part of this contract.
- v. At no time shall any data or processes – that either belong to or are intended for the use of a City or its officers, agents or employees – be copied, disclosed or retained by the Contractor or any party related to the Contractor for subsequent use in any transaction that does not include the City.
- vi. The Contractor shall not use any information collected in connection with the service issued from this proposal for any purpose other than fulfilling the service.

7.2.3 **Compliance with Accessibility Standards:** The Contractor shall comply with and adhere to Accessibility Standards of Section 508 Amendment to the Rehabilitation Act of 1973.

7.2.4 **Security:** The Contractor shall disclose its non-proprietary security processes and technical limitations to the City such that adequate protection and flexibility can be attained between the City and the

Contractor. For example: virus checking and port sniffing – the City and the Contractor shall understand each other's roles and responsibilities.

7.2.5 Security in Compliance with Chapter 521 of the Texas Business and Commerce Code:

Contractor shall comply with all requirements under Chapter 521 of the Texas Business and Commerce Code, including but not limited to being responsible for a program that protects against the unlawful use or disclosure of personal information collected or maintained in the regular course of business. The program shall include policies and procedures for the implementation of administrative, technical, and physical safeguards, and shall also address appropriate corrective action for events of any security breach and proper methods of destroying records containing sensitive personal information.

7.2.6 Security Incident or Data Breach Notification: The Contractor shall inform the City of any security incident or data breach.

- i. **Incident Response:** The Contractor may need to communicate with outside parties regarding a security incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the contract. Discussing security incidents with the City should be handled on an urgent as-needed basis, as part of Contractor communication and mitigation processes as mutually agreed upon, defined by law or contained in the contract.
- ii. **Security Incident Reporting Requirements:** The Contractor shall report a security incident to the appropriate City identified contact immediately as defined in the SLA.
- iii. **Breach Reporting Requirements:** If the Contractor has actual knowledge of a confirmed data breach that affects the security of any City content that is subject to applicable data breach notification law, the Contractor shall (1) promptly notify the appropriate City identified contact within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the data breach in a timely manner.

7.2.7 Breach Responsibilities: This section only applies when a data breach occurs with respect to personal data within the possession or control of Contractor.

- i. The Contractor, unless stipulated otherwise, shall immediately notify the appropriate City identified contact by telephone in accordance with the agreed upon security plan or security procedures if it reasonably believes there has been a security incident.
- ii. The Contractor, unless stipulated otherwise, shall promptly notify the appropriate City identified contact within 24 hours or sooner by telephone, unless shorter time is required by applicable law, if it confirms that there is, or reasonably believes that there has been a data breach. The Contractor shall (1) cooperate with the City as reasonably requested by the City to investigate and resolve the data breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the data breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- iii. Unless otherwise stipulated, if a data breach is a direct result of the Contractor's breach of its contract obligation to encrypt personal data or otherwise prevent its release, the Contractor shall bear the costs associated with (1) the investigation and resolution of the data breach; (2) notifications to individuals, regulators or others required by state law; (3) a credit monitoring service required by state (or federal) law; (4) establishing a website or a toll-free number and call center for affected individuals required by state law – all not to exceed the average per record per person cost calculated for data breaches in the United States (currently \$201 per record/person) in the most recent Cost of Data Breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Contractor based on root cause; all [(1) through (5)] subject to this contract's limitation of liability.

7.2.8 Business Continuity and Disaster Recovery: The Contractor shall provide a business continuity and disaster recovery plan upon request and ensure that the City's recovery time objective (RTO) of two hours is met.

7.3 **Workforce.**

7.3.1 The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.

7.3.2 The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property:

7.3.2.1 use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the Contract; and

7.2.2.2 use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.

7.3.3 If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

7.3.4 Background Checks: The Contractor shall conduct criminal background checks and not utilize any staff, including Subcontractors, to fulfill the obligations of the Contract who have been convicted of any crime of dishonesty, including but not limited to criminal fraud, or otherwise convicted of any felony or misdemeanor offense for which incarceration for up to 1 year is an authorized penalty. The Contractor shall promote and maintain an awareness of the importance of securing the City's information among the Contractor's employees and agents.

7.3.5 Non-disclosure and Separation of Duties: The Contractor shall enforce separation of job duties, require commercially reasonable non-disclosure agreements, and limit staff knowledge of City data to that which is absolutely necessary to perform job duties.

7.3.6 Right to Remove Individuals: The City shall have the right at any time to require that the Contractor remove from interaction with City any Contractor representative who the City believes is detrimental to its working relationship with the Contractor. The City shall provide the Contractor with notice of its determination, and the reasons it requests the removal. If the City signifies that a potential security violation exists with respect to the request, the Contractor shall immediately remove such individual. The Contractor shall not assign the person to any aspect of the contract or future work orders without the City's consent.

7.4 **Compliance with Health, Safety, and Environmental Regulations.** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

7.5 **Significant Event.** The Contractor shall immediately notify the City's Contract Manager of any current or prospective "significant event" on an ongoing basis. All notifications shall be submitted in writing to the Contract Manager. As used in this provision, a "significant event" is any occurrence or anticipated occurrence which might reasonably be expected to have a material effect upon the Contractor's ability to meet its contractual obligations. Significant events may include but not be limited to the following:

7.5.1 disposal of major assets;

7.5.2 any major computer software conversion, enhancement or modification to the operating systems, security systems, and application software, used in the performance of this Contract;

7.5.3 any significant termination or addition of provider contracts;

7.5.4 the Contractor's insolvency or the imposition of, or notice of the intent to impose, a receivership, conservatorship or special regulatory monitoring, or any bankruptcy proceedings, voluntary or involuntary, or reorganization proceedings;

7.5.5 strikes, slow-downs or substantial impairment of the Contractor's facilities or of other facilities used by the Contractor in the performance of this Contract;

7.5.6 reorganization, reduction and/or relocation in key personnel;

7.5.7 known or anticipated sale, merger, or acquisition;

7.5.8 known, planned or anticipated stock sales;

7.5.9 any litigation against the Contractor; or

7.5.10 significant change in market share or product focus.

7.6 **Audits and Records.**

A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.

B. The Contractor shall include section A. above in all subcontractor agreements subsequently entered into in connection with this Contract.

7.6.1 **Data Center Audit:** The Contractor shall perform an independent audit of its data centers at least annually at its expense, and provide a redacted version of the audit report upon request. The Contractor may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.

7.7 **Stop Work Notice.** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.

7.8 **Claims.** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse effect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

7.9 **Notices.** Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the City and the Contractor shall be addressed as follows:

To the City:
City of Austin, Purchasing Office
ATTN: Contract Administrator

To the Contractor:
ZirMed, Inc.
ATTN: Contract Manager

P O Box 1088
Austin, TX 78767

888 W. Market St.
Louisville, KY 40291

7.10 Confidentiality. In order to provide the deliverables to the City, the Parties may require access to certain of the other Party's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Parties acknowledges and agree that the Confidential Information is the valuable property of the Party to whom it belongs and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the Parties and/or its licensors. The Parties (including their employees, subcontractors, agents, or representatives) agree that they will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the other Party or in a manner not expressly permitted under this Contract, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the non-releasing Party promptly notifies the other Party before disclosing such information so as to permit the other Party reasonable time to seek an appropriate protective order. The Parties agree to use protective measures no less stringent than those used within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.

7.10.1 Notwithstanding the foregoing, the City hereby notifies Contractor that the City is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.

7.11 Advertising. The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.

7.12 No Contingent Fees. The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

7.13 Gratuities. The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.

7.14 Prohibition Against Personal Interest in Contracts. No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.

7.15 Independent Contractor. The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.

7.16 Assignment-Delegation. The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.

7.17 **Waiver.** No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.

7.18 **Modifications.** The Contract can be modified or amended only in writing signed by both parties. No pre-printed or similar terms on any Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.

7.19 **Interpretation.** The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

7.20 **Dispute Resolution.**

7.20.1 If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.

7.20.2 If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

7.21 **Minority And Women Owned Business Enterprise (MBE/WBE) Procurement Program.**

7.21.1 All City procurements are subject to the City's Minority-Owned and Women-Owned Business Enterprise Procurement Program found at Chapters 2-9A, 2-9B, 2-9C and 2-9D of the City Code. The Program provides Minority-Owned and Women-Owned Business Enterprises (MBEs/WBEs) full opportunity to participate in all City contracts.

7.21.2 The City of Austin has determined that no goals are appropriate for this Contract. **Even though no goals have been established for this Contract, the Contractor is required to comply with the City's MBE/WBE Procurement Program, Chapters 2-9A, 2-9B, 2-9C and 2-9D, of the City Code, as applicable, if areas of subcontracting are identified.**

7.21.3 If any service is needed to perform the Contract and the Contractor does not perform the service with its own workforce or if supplies or materials are required and the Contractor does not have the supplies or materials in its inventory, the Contractor shall contact the Department of Small and Minority Business Resources (DSMBR) at (512) 974-7600 to obtain a list of MBE and WBE firms available to perform the service

or provide the supplies or materials. The Contractor must also make a Good Faith Effort to use available MBE and WBE firms. Good Faith Efforts include but are not limited to contacting the listed MBE and WBE firms to solicit their interest in performing on the Contract; using MBE and WBE firms that have shown an interest, meet qualifications, and are competitive in the market; and documenting the results of the contacts.

7.22 **Subcontractors.**

7.22.1 If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan, the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.

7.22.2 Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:

7.22.2.1 require that all deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract.

7.22.2.2 prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor.

7.22.2.3 require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;

7.22.2.4 require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and

7.22.2.5 require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.

7.22.3 The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.

7.22.4 The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

7.23 **Jurisdiction And Venue.** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

7.24 **Invalidity.** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed

severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

7.25 **Holidays.** The following holidays are observed by the City:

| <u>Holiday</u> | <u>Date Observed</u> |
|------------------------------------|-----------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr.'s Birthday | Third Monday in January |
| President's Day | Third Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | First Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | Fourth Thursday in November |
| Friday after Thanksgiving | Friday after Thanksgiving |
| Christmas Eve | December 24 |
| Christmas Day | December 25 |

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

7.26 **Survivability of Obligations.** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

7.27 **Non-Suspension or Debarment Certification.** The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

7.28 **Incorporation of Documents. Section 0100, Standard Purchase Definitions,** is hereby incorporated into this Contract by reference, with the same force and effect as if they were incorporated in full text. The full text versions of this Section are available, on the Internet at the following online address:

https://assets.austintexas.gov/purchase/downloads/standard_purchase_definitions.pdf

In witness whereof, the parties have caused duly authorized representatives to execute this Contract on the dates set forth below.

ZIRMED, INC.

By: 
Signature

Contracts
Name: _____
Printed Name

CFO
Title: _____

12/18/2018
Date: _____

CITY OF AUSTIN

By: 
Signature

Name: Sai Purcell
Printed Name

Title: Procurement Specialist IV

Date: 12/19/2018

List of Exhibits

| | |
|------------|--|
| Exhibit A | Deliverables |
| Exhibit B | Business Associate Agreement |
| Exhibit C | Non Discrimination Certification, Section 0800 |
| Exhibit D | Price Sheet |
| Appendix A | System Requirements - ZirMed Responses |

EXHIBIT A

DELIVERABLES

Section I - Solutions & Pricing

This Agreement governs access to and use of Services identified herein at the fees associated therewith. The proposed fee schedule will be honored until 07/11/2018 and expires thereafter unless accepted.

Eligibility Verification

| Solution | Your Monthly Fee | Implementation Fee |
|--|------------------|--------------------|
| Eligibility Verification (Direct Data Entry) \$0.20 per inquiry. | \$0.00 | \$0.00 |
| Total | | \$0.00 |

Claims Management

| Solution | Your Monthly Fee | Implementation Fee |
|--|------------------|--------------------|
| Claims Management (Professional - Batch) \$0.20 per electronic claim. Paper Claims: \$0.45 each, \$0.25 per additional page printed. | \$0.00 | \$0.00 |
| Total | | \$0.00 |

Electronic Remittance Advice

| Solution | Your Monthly Fee | Implementation Fee |
|--|------------------|--------------------|
| Electronic Remittance Advice - Delivery and View \$0.05 per ERA. | \$0.00 | \$0.00 |
| Total | | \$0.00 |

Patient Statements

| Solution | Your Monthly Fee | Implementation Fee |
|---|------------------|--------------------|
| Print Services \$0.71 each for the first page printed, \$0.12 each additional page. | \$0.00 | \$0.00 |
| Total | | \$0.00 |

Technology, Staffing, and Support Services

In addition to the features and functionality referenced within, you'll also receive the following technology, staffing and support services:

- Six Sigma designed implementation
- Unlimited users
- Ongoing training available online
- Support available through via phone, chat, or online case submission
- Frequent updates and communications from ZirMed about the company's newest available features, functionality, and regulatory changes that could impact your business
- Reporting package available online
- SSAE-16 Certification & Disaster Recovery
- Access to ZirMed's developer portal that facilitates product integration

Your support team and ZirMed's Support & Training Center enable your users and managers to:

- Log support issues
- View/manage status of open issues
- View/manage prior issues and resolution
- Access knowledgebase articles
- Access training materials such as user guides and training videos 24/7
- Attend regularly scheduled training webinars

Section III - Terms and Conditions

1. Access and Use of ZirMed Products and Services. Customer's access and use of ZirMed Services are subject to the terms and conditions of this Agreement and the pricing applicable to the account, including any revisions, supplements or addendum mutually agreed to by the parties in writing. Access is restricted to Customer's internal use and benefit and any other access is prohibited. ZirMed only grants access to ZirMed's website to persons, organizations and facilities that have contracted with ZirMed and that are in good standing pursuant to that agreement. Customer is responsible to ensure that entities affiliated with it that have access to Services (consistent with the terms of the Agreement) will abide by the terms of this Agreement and is responsible for any of their acts and omissions, including, but not limited to, any damages caused by them.
2. Authorization and Use. ZirMed grants to Customer a limited, nonexclusive and nontransferable license to use the Services. Except as otherwise set forth herein, Customer may access and use the Services for Customer's internal business use and for no other purpose. Access to Services requires minimum acceptable equipment and telecommunications capability. Unless otherwise stated by the nature of the Service, Services provided by ZirMed do not include equipment, peripherals, devices or connectivity between Customer and ZirMed for the transmission or receipt of Services by Customer. Customer is responsible at its expense to procure and obtain such necessary equipment and supplemental service, including, but not limited to, modems or other Internet access devices and appropriate telecommunications service. Specifications for minimum acceptable equipment and approved hardware interface devices required for access to Services may be obtained from ZirMed upon request.
3. Customer Duties and Obligations. Customer agrees to use the Services provided by ZirMed hereunder only in accordance with this Agreement and applicable laws, regulations, and rulings, now or hereafter imposed. ZirMed reserves the right to take all actions, including termination of Services pursuant to this Agreement, which it believes to be necessary to comply with applicable laws, regulations, rulings and ZirMed specifications as described herein. Customer and its users may not use or access the Services in any way which, in ZirMed's reasonable discretion, adversely affects the performance or function of the Services or interferes with the ability of other authorized parties to access the Services. ZirMed may suspend Customer and its users' access to and/or use of the Services, without credit, at any time if, in ZirMed's sole discretion, the performance, integrity or security of the Services is in danger of being compromised as a result of such access. Customer will retain all original and source documents according to federal and state laws and regulations and shall provide all supporting documents to ZirMed as requested. Customer agrees that ZirMed has the right to audit and confirm information submitted, and Customer assumes all liability regarding said information. Customer agrees to consider and treat all information received through the Services as confidential. Customer is responsible for (a) identifying individuals or organizations that Customer wishes to have access to and are qualified to access ZirMed Services, including, but not limited to, dedication of individuals for the implementation and training process; (b) when necessary, creating and sending required test data that would include all payers and specialties; (c) providing necessary information, complete and return to ZirMed all forms reasonably required by ZirMed or Payers in a timely manner; (d) providing authorized signatures to ZirMed and to the payers as required by applicable law.

Further, Customer is responsible for identifying, designating and updating both the Executive Authority and Domain Administrator for ZirMed Services. A description of these designations is more fully defined in Section 23 of this Agreement. ZirMed will assign each entity or individual that Customer identifies as a user of Services, a password and Customer agrees, for Customer and all such affiliated entities, not to reveal said password to any third party without ZirMed's written consent. Customer agrees to notify ZirMed immediately and in writing of any known or suspected unauthorized use of ZirMed Services or suspected breach of security (including loss, theft, unauthorized password disclosure, etc.). Customer acknowledges that ZirMed may find it necessary to disable access to ZirMed's website and any Service at any time if ZirMed has reason to believe that Customer or an affiliate has violated this Agreement or presents a security risk. Customer agrees to implement and enforce appropriate security measures to reduce the risk of unauthorized access to Services.

4. ZirMed Duties and Obligations. ZirMed agrees to supply and support the Services subscribed to by Customer in conformity with the terms of this Agreement. ZirMed shall provide Customer with information materials regarding initiation and use of ZirMed's Internet-based and desktop Services and network. ZirMed will provide all reasonably required start-up and maintenance services to Customer in initiating use of the connections with Services. ZirMed will also provide online education and testing, system implementation and mapping, as well as, troubleshooting services. In the event that Customer and ZirMed mutually agree that it is necessary for ZirMed personnel to travel to Customer's location for implementation, training, or general customer support, Customer agrees to reimburse ZirMed's reasonable travel and living expenses, subject to the terms of the services Contract.
5. Privacy and Security. ZirMed has established and agrees to maintain physical, electronic and procedural safeguards that meet or exceed industry standards in the healthcare claims processing and financial services industries including HIPAA, HITECH and the Gramm-Leach-Bliley Act including all applicable regulations promulgated under such statutes.

Customer acknowledges that account codes and passwords are critical elements to maintaining privacy and security and that Customer agrees to keep confidential and not to disclose to any third parties account codes or passwords issued to Customer by ZirMed. Accordingly, Customer assumes full responsibility for selection and use of codes or passwords as may be permitted or required by the particular Service involved. Customer shall be responsible to ensure that each user granted an account code and/or password: (a) is fully aware of all of the obligations under this Agreement and acts in accordance with them; and (b) maintains the secrecy and security of account codes and passwords, and does not disclose them to any other person or entity. Customer shall be responsible for any use or access to the Services by any person or entity accessing it through the use of a Customer account code and password, whether such access was authorized or not. The use of the account code and password assigned to any user shall be deemed to constitute the acts of such person, and ZirMed shall be entitled to rely upon the data input without any obligation to identify or otherwise verify any person who gains access to the Services by means of such account code or password. Customer acknowledges that transmission of confidential information outside of ZirMed's secure website may not be secure. Email, instant messaging or other forms of communication, should not contain confidential or personal information as these forms of communication cannot be assuredly secure and private.

6. Pricing and Payment. All charges for the use of Services ("Charges") shall be billed to Customer monthly. Charges include monthly fees, license fees and transaction or usage fees as set forth herein. Transaction or usage fees shall be based on the amount of usage recorded by ZirMed's computer system, and the pricing in effect at the time of Customer's use of such Services.

The prices for Services provided hereunder do not include sales, use, excise, value added, utility or similar taxes which may be applicable in the U.S. or at any other location. Consequently, in addition to the specified prices, the amount of any such present or further tax applicable to the provision of Services hereunder by ZirMed shall be paid by Customer (other than those taxes which are associated with the income of ZirMed), or Customer shall reimburse ZirMed for such taxes upon its receipt of billing therefore from ZirMed. If Customer claims an exempted status from any applicable tax, Customer shall provide ZirMed with a tax-exemption certificate acceptable to the taxing authorities. In addition, Customer acknowledges that ZirMed has no control over certain government-imposed fees and tariffs (e.g. postal increases or interchange fees) or if any change in the rules, regulations or operating procedures of any service supplier or any federal, state or local governmental agency or regulatory authority results in a cost increase. Any such increase shall become effective for Customer on the same day as the increase becomes effective as to ZirMed, or is otherwise incurred by ZirMed.

All payments should be sent to ZirMed via US Mail or as otherwise agreed, to the address set forth on the invoice. Invoices are due upon receipt. ZirMed offers various automated payment options including ACH and recurring billing.

Customer may choose an automated payment option by contacting ZirMed's accounting department. Due to the high direct costs of some services, ZirMed restricts the use of purchasing cards, credit cards or debit cards to transactions totaling less than five thousand dollars (\$5,000) in a given month. Charges in excess of this amount will be subject to a convenience fee of three percent (3%).

. If payment is not timely made, interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved. If any undisputed amount of any invoice remains unpaid, ZirMed may (without terminating this Agreement and reserving cumulatively all other remedies and rights under this Agreement and at law) suspend further Services and licenses to access the Services under this Agreement without further notice to Customer.

7. Custom Development and Consulting: ZirMed will provide custom development and consulting services ("Special Services") on an "as requested" or "as required" basis to Customer. Any and all Special Services will be clearly communicated to Customer and approved in writing by both parties prior to undertaking. Fees for Special Services provided to Customer shall be billed to Customer upon the delivery thereof or as scheduled and mutually agreed upon at ZirMed's then current rates (with the development or consulting being billable in fifteen (15) minute increments). Other fees payable by Customer shall include the reasonable costs of travel and related expenses to and from Customer's site as required by such Special Services, subject to the terms of the services contract.
8. Force Majeure. ZirMed shall not be liable to Customer by reason of any failure in performance of this Agreement in accordance with its terms if such failure arises out of causes beyond the reasonable control and without the fault or negligence of ZirMed or its subcontractors. Such causes may include, but are not limited to, unavailability of communications facilities, acts of God, acts of the public enemy, Customer's actions or failure to act, acts of civil or military authority, governmental priorities, fires, floods, strikes, unavailability of labor, materials, or energy sources, delay in transportation, riots or war.
9. Records Retention. If required by regulations now or hereafter issued by the Centers for Medicare & Medicaid Services (formerly known as the Health Care Financing Administration) pursuant to Section 952 of the Omnibus Reconciliation Act of 1980 (Section 1861(v)(1)(I) of the Social Security Act [42 U.S.C. § 1395 (x)(v)(1)(I)], 42 C.F.R. §§420.300-420.304), as amended, and the regulations promulgated thereunder, the books and records of ZirMed necessary to certify the nature and extent of costs associated with ZirMed's performance of services under this contract shall be maintained and preserved by ZirMed for such period of time as provided by law so as to be available for and subject to inspection and review by appropriate agencies of the United States and the Customer. In addition, if and to the extent that ZirMed uses the services of a related organization to provide services hereunder, ZirMed will require such related organization to maintain, preserve and make available its books and records to the same extent that ZirMed is so required. In the event that this Agreement is not subject to the provisions of Section 952 or regulations promulgated hereunder, this section of the Agreement shall be null and void. The provisions of this Section shall survive the expiration or termination of this Agreement.
10. Executive Authority and Domain Administrator. The "Executive Authority" identified below is an authorized individual empowered to make decision on behalf of Customer and having the legal authority to legally bind Customer. The Executive Authority may issue a directive to ZirMed to designate, modify or change the Domain Administrator. The "Domain Administrator" as identified below, will have full administrative privileges for Customer's account or family of accounts (Domain) to add and delete users and will manage access rights, privileges and permissions for each user for the domain. As such, the Domain Administrator will be assigned a login and password to access the ZirMed website for the designated domain to permit this individual to perform these functions.

Executive Authority

Name: Jodi Hassinger

Office Address: 15 Waller

City: Austin

State: TX

Zip: 78701

Phone: (512) 972-7039

Fax:

Cell:

Email: jodi.hassinger@austintexas.gov

Domain Administrator

Name: Jodi Hassinger

Office Address: 15 Waller

Domain Administrator

City: Austin
Phone: (512) 972-7039
Email: jodi.hassinger@austintexas.gov

State: TX
Fax:

Zip: 78701
Cell:

In Witness Whereof, the Parties to this Agreement, in recognition of their undertakings set forth above, and for due and valid consideration, execute this Agreement.

Customer

ZirMed Inc.

By (signed):



Name: Sai Purcell
Title: Procurement Specialist IV
Date: 12/19/2018

By (signed):



Name: Contracts
Title: CFO
Date: 12/18/2018

EXHIBIT B**BUSINESS ASSOCIATE AGREEMENT**

THIS BUSINESS ASSOCIATE AGREEMENT is entered into by and between Austin Travis County EMS ("Covered Entity") and ZirMed, Inc., a Delaware corporation ("Business Associate"), with offices at 888 West Market Street, Suite 400, Louisville, Kentucky 40202, as an addendum to the subscriber agreement between the parties (the "Addendum") and shall be effective as of the date of Services Agreement (as defined hereunder).

Recitals

WHEREAS, the parties have entered into an underlying services agreement, ("Services Agreement") incorporated herein by reference;

WHEREAS, in order for Business Associate to furnish services to Covered Entity in accordance with the Services Agreement, Covered Entity must at times disclose to Business Associate protected health information ("PHI") governed by the Health Insurance Portability and Accountability Act of 1996, Pub. 104-191 ("HIPAA"), as amended, and the accompanying regulations promulgated thereunder at 45 C.F.R. Parts 160 and 164 (the "Privacy Rule") and 45 C.F.R. Parts 160, 162 and 164 (the "Security Rule") (collectively, the "HIPAA Regulations"), as amended; and

WHEREAS, the parties desire to enter into this Addendum in order to comply with the HIPAA Regulations.

NOW THEREFORE, the parties, in consideration of the mutual obligations contained herein and in the Services Agreement and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, agree as follows:

1. **Definitions.** The terms used, but not otherwise defined, in this Addendum shall have the same meaning as those in the HIPAA Regulations, as amended.
2. **Duties and Obligations of Business Associate.** Business Associate hereby agrees to fully comply with the requirements applicable to "business associates" under the HIPAA Regulations, and the terms and conditions set forth under the Services Agreement and this Addendum.
 - a. **Permitted Uses and Disclosures.** Business Associate may use or disclose PHI of the Covered Entity for any and all purposes necessary to perform the duties and obligations of Business Associate under the Services Agreement, or as otherwise expressly permitted under this Addendum, the Services Agreement or in compliance with 45 C.F.R. §164.504(e). Business Associate may further use or disclose such PHI: (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) if the disclosure is Required by Law; and (iv) if Business Associate obtains reasonable assurances from the person to whom PHI is disclosed that the PHI will be held confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed, the person will use appropriate safeguards to prevent use or disclosure of the information, and the person will notify Business Associate immediately of any Breach of Unsecured PHI in the manner and time frame set forth under Section 2.e. of this Addendum.
 - b. **Authorizations.** Notwithstanding any other limitation herein, Covered Entity agrees that nothing in this Addendum prohibits Business Associate from using or disclosing PHI to the extent permitted by an authorization from the applicable Individual. If the use or disclosure of PHI in this Agreement is based upon an Individual's specific authorization for the use or disclosure of his or her PHI, and the Individual revokes such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, Business Associate shall, if it has notice of such revocation, expiration, or invalidity, cease the use and disclosure of the Individual's PHI except to the extent it has relied on such use or disclosure, or if an exception under the Privacy Rule expressly applies.
 - c. **Safeguarding PHI.** Business Associate shall develop and implement reasonable administrative, physical and technical safeguards to prevent the unauthorized use or disclosure of PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity; and to protect the confidentiality, integrity and availability of such PHI. Business Associate shall further adopt a security plan that takes into account each of the Security Rule standards, as appropriate; and provide training, as appropriate, to relevant employees, subcontractors and agents of Business Associate on such policies and procedures to prevent the unauthorized use or disclosure of PHI. **Minimum Necessary.** Business Associate shall ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and, the use of limited data sets when possible.
 - d. **Third Party Agreements.** Under certain circumstances, Business Associate may need to enter into agreements with agents or subcontractors in order to satisfy Business Associate's obligations under the Services Agreement. If Business Associate discloses to these agents or subcontractors any PHI received from Covered Entity in this context, or created or received by Business Associate on behalf of Covered Entity, Business Associate shall require such agents or subcontractors to enter into a written agreement with Business Associate that requires such agent or subcontractor to agree to be bound by the same restrictions and conditions that apply to Business Associate under

this Addendum, and to implement reasonable and appropriate safeguards to protect the confidentiality, integrity and availability of PHI created, received, transmitted or maintained by the parties during the term of the Services Agreement in conformance with the HIPAA Regulations.

e. Reporting Unauthorized Uses and Disclosures. Business Associate agrees to notify Covered Entity of a Breach of Unsecured PHI discovered by Business Associate. Such notice must: (i) be made promptly, but in no event later than fifteen (15) days from the date Business Associate discovers the Breach; (ii) contain a description of what happened; (iii) the date of the Breach and date of Discovery; (iv) a description of the types of Unsecured PHI involved in the Breach; (v) the steps the Individuals should take to protect themselves from potential harm resulting from the Breach; (vi) a brief description of what Business Associate is doing or will do to investigate the Breach, mitigate losses, and protect against any further Breaches; and (vii) the contact information and procedures for Individuals to obtain additional information. Any and all notification to those individuals whose PHI has been breached shall be made by the Business Associate with the collaboration of Covered Entity. The Business Associate will notify the Covered Entity via telephone with follow-up in writing to include; name of individuals whose PHI was breached, information breached, date of breach, form of breach, etc. The cost of the notification will be paid by the Business Associate.

f. Access to Information. Business Associate shall provide access to PHI maintained in a Designated Record Set to Covered Entity or an Individual within fifteen (15) days of a written request from Covered Entity at Business Associate's offices during normal business hours. Business Associate, its agents and subcontractors shall respond to such request in a manner and time frame specified herein in order that Covered Entity may comply with the HIPAA Regulations.

g. Access to Books and Records. Business Associate shall make its internal practices, books and records relating to the PHI created, maintained, transmitted or received by Business Associate on behalf of Covered Entity available to Covered Entity and the Secretary of the Department of Health and Human Services ("Secretary") for the purpose of determining Covered Entity's compliance with the HIPAA Regulations and the terms of this Addendum. A request for access by Covered Entity under this Section 2.g. shall be granted upon fifteen (15) days prior written notice, and conducted at Business Associate's offices during normal business hours.

h. Availability of PHI for Amendment. Business Associate agrees to make any amendment(s) to PHI maintained in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 within thirty (30) days after receipt of a written direction from Covered Entity.

i. Accounting of Disclosures. Upon Covered Entity's written request, Business Associate shall make available an accounting of disclosures of PHI made by Business Associate for which Covered Entity is required to provide such accounting of disclosures under the HIPAA Regulations.

j. Data Aggregation Service. Business Associate may use or disclose PHI to provide Data Aggregation Services, as that term is defined by 45 C.F.R. §164.501, relating to its health care operations.

k. Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

3. Duties and Obligations of Covered Entity.

a. Privacy Notice. Covered Entity shall inform Business Associate of any changes, or limitations, in the Notice of Privacy Practices ("Privacy Notice") of Covered Entity, and provide Business Associate with a copy of the Privacy Notice in effect.

b. Restrictions of Use or Disclosure of PHI. Covered Entity shall inform Business Associate of any restrictions on the use or disclosure of PHI requested by Individuals, including any changes to or revocation of such restriction.

c. No Impermissible Requests. Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity, except as permitted in Section 2 above.

d. Notifications. If deemed applicable by Covered Entity, Covered Entity shall collaborate on notification made by Business Associate of Individuals of breach of their Unsecured PHI in accordance with the requirements set forth in 45 C.F.R. § 164.404.

4. Term and Termination.

a. Term. The term of this Addendum shall be effective and terminate upon the effective and termination date of the Services Agreement. Upon said termination, Business Associate shall return or destroy, as the case may be, PHI to Covered Entity in accordance with Section 4.d. below.

b. Material Breach. If Covered Entity determines that Business Associate has breached a material term of this Addendum, Covered Entity may provide notice of such breach to Business Associate and afford Business Associate

an opportunity to cure the alleged material breach within the time period allowed by the Services Agreement for cure of material breaches of its terms. If Business Associate fails to cure such breach within the time period allowed by the Services Agreement, Covered Entity may terminate this Addendum and the Services Agreement.

c. **Report to the Secretary.** If Covered Entity determines that Business Associate has breached a material term of this Addendum, and Business Associate refuses or is not able to cure the breach and termination is not feasible, Covered Entity shall report the breach and related issues to the Secretary. Termination is not feasible if there are no viable alternatives to continuing the Services Agreement with Business Associate.

d. **Effect of Termination.** Upon termination of this Addendum, for any reason, Business Associate shall return or destroy all PHI created, maintained, transmitted or received by Business Associate on behalf of Covered Entity. Business Associate agrees not to retain copies of the PHI after termination of this Addendum. Business Associate agrees to recover any such PHI in possession of its agents or subcontractors. If return or destruction of the PHI is not feasible, Business Associate will notify Covered Entity in writing of the reasons for such determination and agrees to extend the protections of this Addendum for as long as necessary to protect the PHI, but Business Associate shall not use or disclose PHI except for the limited purposes for which extended retention of such records is necessary. If Business Associate elects to destroy the PHI, it shall certify to Covered Entity that the PHI has been destroyed.

e. **Survival.** The parties' obligations which by their nature continue beyond termination, cancellation or expiration of the Services Agreement and this Addendum shall survive termination, cancellation or expiration of the Services Agreement and this Addendum.

5. **Change of Law.** The parties acknowledge that the HIPAA Regulations may be modified from time to time. The parties specifically agree to take such action as necessary to implement the standards and requirements of the HIPAA Regulations and other applicable laws and regulations relating to the privacy and security of PHI. Further, the parties acknowledge that pricing under the Services Agreement is based on legal requirements in effect on the effective date of the Services Agreement, and that compliance with additional or different legal requirements may result in changes of scope and pricing under the Services Agreement. Upon Covered Entity's request, Business Associate agrees to enter into good faith negotiations with Covered Entity concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of the HIPAA Regulations or other applicable laws and regulations relating to the privacy and security of PHI. If the parties fail to reach such an amendment within ninety (90) days after commencement of negotiations, either party may terminate this Addendum and the Services Agreement by providing written notice to the other party, effective sixty (60) days after the date of such notice. Nothing herein shall be deemed to extend the term of any other agreement between the parties.
6. **Binding Nature and Assignment.** This Addendum shall be binding on the parties, their successors and assigns, but neither party may assign their rights and obligations under this Addendum without the prior written consent of the other, which consent shall not be unreasonably withheld.
7. **Interpretation.** The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with the HIPAA Regulations and other applicable federal and state privacy and security laws and regulations.
8. **Notices.** All notices permitted or required under this Addendum shall be in writing and shall be delivered by personal delivery, electronic mail, or by certified or registered mail, return receipt requested, and shall be deemed given upon personal delivery. Notices shall be sent to the addresses set forth in this Addendum or such other address as either party may specify in writing.
9. **Independent Contractor.** The relationship between the parties will solely be that of independent contractors engaged in the operation of their own respective businesses, and Business Associate shall not be considered an employee, agent, or part of, or in joint venture with, the Covered Entity or any affiliate of Covered Entity.
10. **No Third Party Beneficiary.** This Addendum has been entered into solely for the benefit of Covered Entity and Business Associate and is not intended to create any legal, equitable or beneficial interest in any third party, or to vest in any third party any interest as to enforcement or performance.
11. **Regulatory References.** A reference in this Addendum to a section in the HIPPA Regulations means the section as in effect, or as amended, and for which compliance is required.

12. **Amendments.** This Addendum may not be modified or amended except by a writing that explicitly refers to the amendment of this Addendum and that is signed by authorized representatives of both parties.
13. **Waiver.** None of the provisions of this Addendum shall be deemed to have been waived by any act, omission, or acquiescence on the part of the disclosing party without a written instrument signed by the disclosing party. No waiver by a party of any breach shall be effective unless in writing, and no waiver shall be construed as a waiver of any succeeding breach, whether or not of the same or a different term or condition.
14. **Effect on Services Agreement.** Except to the extent specifically amended by this Addendum, all of the terms and conditions contained in the Services Agreement shall remain in full force and effect. In the event of any inconsistency between this Addendum and the Services Agreement, the terms and conditions of this Addendum shall govern and prevail.

In Witness Whereof, Business Associate and Covered Entity have caused this Addendum to be signed and delivered by their duly authorized representatives, as of the date set forth above.

Austin Travis County EMS ("Covered Entity")


ZirMed Inc. ("Business Associate")

By (signed):

Name:

Title:

Date:


Sai Russell
Procurement Specialist IV
12/19/18

By (signed):

Name:

Title:

Date:


Contracts
CFO
12/18/2018

EXHIBIT C

**City of Austin, Texas
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION**

**City of Austin, Texas
Equal Employment/Fair Housing Office**

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

**City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy**

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion,

recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR
Authorized
Signature

Steve Oreskovich

steve oreskovich

Title

CFO

EXHIBIT D PRICE SHEET

| Table 1 – Services pricing | |
|---|-----|
| Annual maintenance and support | N/A |
| Annual licensing fees, if required – note in comments if there are different fees for different access licenses (view only, edit, admins) | N/A |
| Training, Year 1 only unless major release is on roadmap in a future year | N/A |

| Table 2 - Implementation pricing | |
|--|----------------------------|
| Description | Comments |
| Implementation Costs – include any data migration, project management fees, and setup and configuration costs, support services. Provide breakdown of costs in the comments section. If services are offered at \$0 as part of the solution, please indicate that as well. | Support offered at no cost |

| Table 3 - Printing and Mailing Services (assumed to be billed monthly per usage, please indicate if the assumption is incorrect) | |
|---|---|
| Description | Unit Price (per transaction/per sheet) |
| Cost per Claim Submission | \$0.20 |
| Cost per Electronic Remittance Advice (ERA) | \$0.05 |
| Cost per Eligibility Verification | \$0.20 |
| Print services per sheet in black and white (front and back printing = 1 sheet) | \$0.71 |
| Additional page charge in black and white (front and back printing = 1 sheet) *estimated qty unknown at this time | \$0.12 |
| Print services per sheet in colored font (front and back printing = 1 sheet) *estimated qty unknown at this time | \$0.71 |
| Additional page charge in colored font (front and back printing = 1 sheet) | \$0.12 |

| | |
|--|------------------------|
| Print services per sheet in language other than English (front and back printing = 1 sheet) *estimated qty unknown at this time | No difference in price |
| Mailing services to include document stuffing, envelop, addressing, postage and sending 1 sheet – if included in print fee, please indicate in the comments section | Included in print fee |
| Mailing services to include document stuffing, envelop, addressing, postage and sending additional pages within the same mailer – if included in print fee, please indicate in the comments section *estimated qty unknown at this time | Included in print fee |

| Table 4 – all other costs | |
|--|---|
| Description | Comment |
| Cost for Additional Training for major release on roadmap in a future year | No charge for existing solution. If brand new solution added to bill plan, one time implementation fee would apply and varies per solution. |



City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: July 18, 2018

DEPT: Emergency Medical Services

TO: Purchasing Officer or Designee

FROM: Meagann Wade, Manager

PURCHASING POC: Sai Xoomsai (Purcell) PHONE: 512-972-7232

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
- What is the municipal purpose that this procurement addresses or furthers?
- Why is the procurement a sole source?
- Has this procurement or a similar procurement been competitively solicited in the past?
- Why is the vendor the only viable solution?
- Are there any other alternative solutions? If so, why are those alternatives unacceptable?
- Is there a concern regarding warranty, compatibility, and/or routine safety?
- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
- Is there a way to retrofit another brand? What is this estimated associated cost?
- What specialized training or certifications are necessary to maintain or repair the equipment/item/system? Is it specific to the proposed vendor?
- **Prices were determined to be reasonable based on the following (select all that apply):**

- ☐ Prices are the same or similar to current City contract.
Notes: At a minimum, note the City of Austin contract number and title.
- ☐ Prices are the same or similar to current contract with another government.
Notes: At a minimum, note the contract number, title and government that created the contract.
- ☐ Prices are on a current and publicly available list price, for the same or similar products, available to all government and commercial customers.
Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
- ☐ Prices are established by law or regulation.
Notes: At a minimum, note the legal or regulatory reference that established the prices.
- ☒ Other means of determining Price Reasonableness.
Notes: Describe any other source that was used to establish Price Reasonableness.

* The questions in the form are designed to justify why this purchase should be exempt from a competitive procurement process. Failure to provide adequate documentation to substantiate the request may lead to the request being rejected.

This contract will provide Austin Travis County Emergency Medical Services (ATCEMS) with web-based Revenue Cycle Management (RCM) solution that manages every aspect of the revenue cycle which include claims management, insurance eligibility, electronic explanation of benefits (EOB), submissions of electronic insurance claims, receipt of electronic remittance advice (ERA) documents, and compatibility with a large variety of insurers. The solution will have the ability to generate billing invoices and other required documents (for example Notice of Privacy Practices) in multiple languages and provide printing and mailing services. The contract will replace the existing clearinghouse contract that expires in March, 2019. This contract will be expanded to include additional elements not currently included in the existing contract. ZirMed RCM is an all in one solution, experienced in EMS clearinghouse, able to generate documents in multiple languages, and can provide printing and mailing services. ZirMed is the sole producer of ZirMed Software and is the only known firm that is able to provide printing services of patient statement files in multiple languages, including but not limited to, English, Spanish, Vietnamese, Chinese, French and Tagalog.

The price reasonableness was obtained by weighing the current clearinghouse services plus the cost of the annual mailing documents, envelopes and postage and added functionalities of the end-to end services not previously made available to City customers and medical providers. Currently, ATCEMS as a covered entity is not compliant with providing a Notice of Privacy Practice (NPP) to patients per Office of Civil Rights HIPAA Privacy 45 CFR 164.520 stating "In an emergency treatment situation, provide the notice as soon as it is reasonably practicable to do so after the emergency situation has ended." The City of Austin mailroom is not capable of mailing multiple pages per envelope therefore resulting in ATCEMS needing to budget for postage and envelopes twice in order to mail the billing invoice and NPP. ZirMed is more cost effective because mailing one billing invoice and NPP would cost \$0.83 while internal to the City of Austin would cost \$1.06. The implementation of ZirMed printing services will provide the resources for ATCEMS to be compliant with the distribution of NPPs.

The clearinghouse services claims management, insurance eligibility, electronic EOBs, submissions of electronic insurance claims, and receipt of ERA documents allows ATCEMS to communicate with a large variety of insurers. As the healthcare industry evolves more insurance carriers require their claims to be submitted electronically, otherwise the carrier will not process the claim. The ability to check insurance eligibility minimizes denials and maximizes timely reimbursement. Receiving EOBs and ERA through an electronic format allows for the City of Austin reimbursement to reflect on a patient's account at an accelerated rate while minimizing errors.

3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☐ Scope of Work or Statement of Work or Vendor Proposal
- ☒ Vendor's Quote
- ☐ Project timeline with associated tasks, schedule of deliverables or milestones, and proposed payment schedule
- ☒ Vendor's or Manufacturer's (if vendor is a sole authorized distributor) sole source letter: less than 6 months old, signed by an authorized representative, and on company letterhead, should clearly state they are the sole provider and explain why

4. Based on the above facts and supporting documentation, the City of Austin has deemed this procurement to be exempt from competitive procurement requirements pursuant to Texas Local Government Code section 252.022(7) and will contract with:

(Vendor Name): _ ZIRMED INC. _____ for

(Description of Procurement): Revenue Clearinghouse Services SAAS

Solution _____

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- ☒ This is a one-time request for \$ 950,000
- ☐ This is a multi-term contract request for _____ (# months for base term) in the amount of \$ with _____ (# of renewal options) for \$ _____ each for a total contract amount of \$ _____.

Recommended
Certification

Miguel Wach 7/24/18
Originator Date

Approved
Certification

Keri Tang 7/24/18
Department Director or designee Date

Rfull 8/8/18
Assistant City Manager / General Manager Date
(procurements requiring Council approval)

Purchasing Office
Review

[Signature] 8/28/18
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

_____ _____
Purchasing Officer or designee Date
(procurements requiring Council approval)



To whom it may concern:

This letter is to confirm that ZirMed can provide printing in multiple languages if the language is contained within the source file or if instructed to do so with the predetermined language provided prior to printing. ZirMed is the sole producer of ZirMed Software and is the only known firm that is able to provide printing services of patient statement files in multiple languages.

Raru J. Saxton

Raru J. Saxton, Director of Patient Payments + Enterprise Support
Waystar Revenue Cycle Technology
the combination of **Navicare & ZirMed**

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Commonwealth of Kentucky
Alison Lundergan Grimes, Secretary of State

Secretary of State
P. O. Box 821
Frankfort, KY 40602-0821
(502) 564-3490
<http://www.sos.ky.gov>

Notary Public Certificate

Notary ID 603199

Alison Lundergan Grimes
SECRETARY OF STATE

To all Whom These Presents Shall Come, Know Ye That:

Lauren Jerbich

having been duly qualified, is hereby appointed and commissioned

NOTARY PUBLIC

In and for the State At Large and is hereby vested with full power and authority to execute and discharge the duties of the said office according to law, and to have and to hold the same, with all the rights and emoluments thereunto legally appertaining for a term of four years beginning June 21, 2018 and ending June 21, 2022.



In testimony whereof, I have caused these letters to be made patent, and the seal of the Commonwealth to be hereunto affixed. Done at Frankfort on June 21, 2018, and in the 227th year of the Commonwealth.

Alison Lundergan Grimes
Secretary of State

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|--|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input checked="" type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

N/A

Subcontracting Opportunities Identified

N/A

Amy Amaya

SMBR Staff

Signature/ Date

8/29/2018

SMBR Director or Designee

Date

8/30/18

Returned to/ Date:

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City of Austin Purchasing Office

Sole Source Certificate of Exemption

DATE: July 18, 2018

DEPT: Emergency Medical Services

TO: Purchasing Officer or Designee

FROM: Meagann Wade, Manager

PURCHASING POC: Sai Xoomsai (Purcell) PHONE: 512-972-7232

Chapter 252 of the Local Government Code requires that municipalities comply with certain competitive solicitation procedures before entering into a contract requiring an expenditure greater than \$50,000, unless the expenditure falls within an exemption listed in Section 252.022 or other applicable law.

Refer to Local Government Code 252.022 for a complete list of exemptions:

[Link to Local Government Code](#)

This Certificate of Exemption must be complete, fully executed, and filed with the City Purchasing Office.

The City has deemed this procurement to be exempt from the competitive solicitation requirements of LGC Chapter 252 based on the following facts:

1. The undersigned is authorized and certifies that the following exemption is applicable to this procurement.

Please check the criteria listed below that applies to this sole source request:

- ☒ Items that are available from only one source because of patents, copyrights, secret process, or natural monopolies.
- ☐ Films, manuscripts or books that are available from only one source.
- ☐ Gas, water and other utilities that are available from only one source.
- ☐ Captive replacement parts or components for equipment that are only available from one source.
- ☐ Books, papers and other library materials for a public library that are available only from the persons holding exclusive distribution rights to the materials.
- ☐ Management services provided by a nonprofit organization to a municipal museum, park, zoo, or other facility to which the organization has provided significant financial or other benefits.

2. Describe this procurement including the following information as applicable:

- What it is for and why it is needed?
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- Are there territorial or geographic restrictions for the product distribution and sale?
- Are there other resellers, distributors, or dealers in the market?
- What other suppliers or products/services were considered?
- If the product is designed to be compatible with existing equipment/item/system, describe the age, value and useful life remaining of the current equipment/item/system. What is the estimated cost of buying new equipment/item/system? What is value of buying the addition versus buying all new?
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Notes: At a minimum, note the list price title, source of the list price (catalog and catalog publish date or web address and download date).
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The price reasonableness was obtained by weighing the current clearinghouse services plus the cost of the annual mailing documents, envelopes and postage and added functionalities of the end-to end services not previously made available to City customers and medical providers. Currently, ATCEMS as a covered entity is not compliant with providing a Notice of Privacy Practice (NPP) to patients per Office of Civil Rights HIPAA Privacy 45 CFR 164.520 stating "In an emergency treatment situation, provide the notice as soon as it is reasonably practicable to do so after the emergency situation has ended." The City of Austin mailroom is not capable of mailing multiple pages per envelope therefore resulting in ATCEMS needing to budget for postage and envelopes twice in order to mail the billing invoice and NPP. ZirMed is more cost effective because mailing one billing invoice and NPP would cost \$0.83 while internal to the City of Austin would cost \$1.06. The implementation of ZirMed printing services will provide the resources for ATCEMS to be compliant with the distribution of NPPs.

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3. Forward the completed and signed Certificate of Exemption to the Purchasing Office along with the following documentation:

- ☐ Scope of Work or Statement of Work or Vendor Proposal
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(Vendor Name): _ ZIRMED INC. _____ for

(Description of Procurement): Revenue Clearinghouse Services SAAS

Solution _____

5. Check the contract type (one-time or multi-term) and fill in the dollar amount and term as applicable:

- ☒ This is a one-time request for \$ 950,000
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Recommended
Certification

Miguel Wach 7/24/18
Originator Date

Approved
Certification

Keri Tang 7/24/18
Department Director or designee Date

R Full 8/8/18
Assistant City Manager / General Manager Date
(procurements requiring Council approval)

Purchasing Office
Review

_____ 8/8/18
Authorized Purchasing Office Staff Date

Purchasing Office
Management Review

_____ 8/8/18
Purchasing Officer or designee Date
(procurements requiring Council approval)



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Raru J. Saxton

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Waystar Revenue Cycle Technology

the combination of **Navicure & ZirMed**

Section 0601: Price Proposal Form for ATCEMS Revenue Clearinghouse

A: Price:

The Table below will be used for price evaluation. A user is defined as ATCEMS staff who is setup to access and use the solution for revenue clearinghouse purposes. If there are different tiers of licensing (read only, edit, administrator) please include breakdown information under Section B.

| Table 1 – Services pricing | | | | | | |
|---|--------|--------|--------|--------|--------|----------|
| Price Category | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Comments |
| Annual maintenance and support | \$0 | \$0 | \$0 | \$0 | \$0 | N/A |
| Annual licensing fees, if required – note in comments if there are different fees for different access licenses (view only, edit, admins) | \$0 | \$0 | \$0 | \$0 | \$0 | n/A |
| Storage Costs, if required | \$0 | \$0 | \$0 | \$0 | \$0 | |
| Training, Year 1 only unless major release is on roadmap in a future year | \$0 | | | | | N/A |
| Total | \$0 | \$0 | \$0 | \$0 | \$0 | |

| Table 2 – Implementation pricing | | |
|--|----------|----------------------------|
| Description | Price \$ | Comments |
| Implementation Costs – include any data migration, project management fees, and setup and configuration costs, support services. Provide breakdown of costs in the comments section. If services are offered at \$0 as part of the solution, please indicate that as well. | \$0.00 | Support offered at no cost |

| Table 3 – Printing and Mailing Services (assumed to be billed monthly per usage, please indicate if the assumption is incorrect) | | | | |
|--|---------------------------|--|---------------------------------------|---|
| Description | Estimated Annual Quantity | Unit Price (per transaction/per sheet) | Extended Price (EST QTY X Unit Price) | Comments |
| Cost per Claim Submission | 55,000 | \$0.20 | \$ 11,000.00 | |
| Cost per Electronic Remittance Advice (ERA) | 6,000 | \$0.05 | 300 | |
| Cost per Eligibility Verification | 40,000 | \$0.20 | \$ 8,000.00 | |
| Print services per sheet in black and white (front and back printing = 1 sheet) | 200,000 | \$0.71 | \$142,000 | |
| Additional page charge in black and white (front and back printing = 1 sheet) *estimated qty unknown at this time | 1 | \$0.12 | \$ | |
| Print services per sheet in colored font (front and back printing = 1 sheet) *estimated qty unknown at this time | 1 | \$0.71 | \$ | |
| Additional page charge in colored font (front and back printing = 1 sheet) | 200,000 | \$0.12 | \$ 24,000.00 | |
| Print services per sheet in language other than English (front and back printing = 1 sheet) *estimated qty unknown at this time | 1 | \$ | \$ | No difference in price |
| Mailing services to include document stuffing, envelop, addressing, postage and sending 1 sheet – if included in print fee, please indicate in the comments section | 200,000 | \$ | \$ | Included in print fee |
| Mailing services to include document stuffing, envelop, addressing, postage and sending additional pages within the same mailer – if included in print fee, please indicate in the comments section *estimated qty unknown at this time | 1 | \$ | \$ | Included in print fee |
| Estimated Annual Total (the estimated annual total amount may be used for each contract year budget) | | | \$185,300 | \$19,300 annual estimated cost excluding print services |

B. All other items:

Provide pricing for all additional items outlined in your response to Appendix A, that will require a fee.

Table 4 – all other costs

| Description | Price per unit | Comments |
|--|----------------|---|
| Cost for Additional Training for major release on roadmap in a future year | \$0.00 | No charge for existing solution. If brand new solution added to bill plan, one time implementation fee would apply and varies per solution. |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |
| | \$ | |

C. Projected Pricing**Table 5 – Projections**

| Price Category | Year 1 | Year 2 | Year 3 | Year 4 | Year 5 | Comments |
|--|------------------|------------------|------------------|------------------|------------------|----------|
| Claim Submission | \$11,000 | \$11,000 | \$11,000 | \$11,200 | \$11,400 | |
| ERA | \$300 | \$300 | \$325 | \$325 | \$350 | |
| Eligibility Verification | \$8,000 | \$8,000 | \$8,000 | \$9,000 | \$9,200 | |
| Print services per sheet (front and back printing = 1 sheet) | \$149,100 | \$152,650 | \$156,200 | \$159,750 | \$163,300 | |
| Additional page charge (front and back printing = 1 sheet) | \$13,200 | \$13,200 | \$13,800 | \$14,400 | \$15,000 | |
| Total | \$181,600 | \$185,150 | \$189,325 | \$194,675 | \$199,250 | |

GOAL DETERMINATION REQUEST FORM

| | | | |
|---------------------------|-------------------------------------|--------------------------------|---|
| Buyer Name/Phone | Sai Xoomsai Purcell/512-974-3058 | PM Name/Phone | Whitney Sklar/512-974-0792 |
| Sponsor/User Dept. | EMS | Sponsor Name/Phone | |
| Solicitation No | PAX0145 | Project Name | Healthcare Revenue Management Clearinghouse |
| Contract Amount | \$150,000 | Ad Date (if applicable) | 04/09/2018 |

Procurement Type

- | | | |
|--|--|--|
| <input type="checkbox"/> AD – CSP | <input type="checkbox"/> AD – CM@R | <input type="checkbox"/> AD – Design Build |
| <input type="checkbox"/> AD – Design Build Op Maint | <input type="checkbox"/> AD – JOC | <input type="checkbox"/> IFB – Construction |
| <input type="checkbox"/> IFB – IDIQ | <input type="checkbox"/> PS – Project Specific | <input type="checkbox"/> PS – Rotation List |
| <input checked="" type="checkbox"/> Nonprofessional Services | <input type="checkbox"/> Commodities/Goods | <input type="checkbox"/> Cooperative Agreement |
| <input type="checkbox"/> Critical Business Need | <input type="checkbox"/> Interlocal Agreement | <input type="checkbox"/> Ratification |
| <input type="checkbox"/> Sole Source* | | |

Provide Project Description**

This will be a purchase of web-based software application revenue management services. This revenue management services solution shall provide ATCEMS staff with online tools that allow for insurance eligibility validation, electronic explanation of benefits, submissions of electronic insurance claims, receipt of Electronic Remittance Advice documents, and compatibility with a large variety of insurers. The clearinghouse shall have the ability to generate invoices and other required documents in multiple languages and provide printing and mailing services as outlined within this request for proposal.

Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.

N/A

List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)

92045 - software maintenance and support (10%) , 92003 - APPLICATION SERVICE PROVIDER (ASP), WEB BASED HOSTED (90%)

Sai Xoomsai Purcell

02/27/2018

Buyer Confirmation

Date

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY

| | | | |
|---|-----------|-----------------------------|-----------|
| Date Received | 2/27/2018 | Date Assigned to BDC | 2/27/2018 |
| In accordance with Chapter2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination: | | | |
| <input type="checkbox"/> Goals | % MBE | % WBE | |

GOAL DETERMINATION REQUEST FORM

| | | |
|--|-------------------------|--|
| <input type="checkbox"/> Subgoals | % African American | % Hispanic |
| | % Asian/Native American | % WBE |
| <input type="checkbox"/> Exempt from MBE/WBE Procurement Program | | <input checked="" type="checkbox"/> No Goals |

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

None

Subcontracting Opportunities Identified

None

John Wesley Smith CTPM 02.27.18

SMBR Staff

John Wesley Smith
Signature/ Date

SMBR Director or Designee

Date 3/5/18

Returned to/ Date: